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Supreme Court, U.S.
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No. 04-836

IN THE
Supreme Court of the United States

JEFFREY R. GOLIN AND ELSIE Y. GOLIN
ON BEHALF OF THEMSELVES
AND AS NEXT FRIENDS FOR DAUGHTER
NANCY K. GOLIN,

Petitioners

v.

CLIFFORD B. ALLENBY, DIRECTOR
DEPARTMENT OF DEVELOPMENTAL SERVICES,
STATE OF CALIFORNIA

Respondent

On Petition for a Writ of *Certiorari*
To The United States Circuit Court of Appeals for the Ninth Circuit

SUPPLEMENTAL BRIEF

FROM A DENIAL OF A CERTIFICATE OF APPEALABILITY FOR AN APPEAL FOR A PETITION FOR A WRIT OF HABEAS CORPUS
IN RE NANCY GOLIN

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INTERVENING MATTER AND ARGUMENT

I. EXTRAORDINARY GROUNDS EXIST FOR FEDERAL HABEAS REVIEW DUE TO LOCAL STATE INFLUENCE AND PROFITEERING IN GROUP HOMES

A recent series of ground breaking investigative reports in the *Charlotte Observer*[1] exposes the "gold rush" of federal funding attracting speculative, unscrupulous and unqualified entrepreneurs to invest on a large scale in group homes for the mentally disabled based largely on greed rather than genuine concern. This has turned the mentally disabled into "cash cows" eagerly sought by state agencies such as our San Andreas Regional Center (SARC) to fill a burgeoning surplus of group home beds. These, and other stories, document how entrepreneurs skim money from services to pay off the mortgages on these homes and then sell them at a profit often within a year, along with their kennel of children that are sold with the home. Everyone wants to cash in on group homes due to their high turnover rates of profit. Investors, including lawyers and judges, are alleged to participate in blind trusts to rake in unprecedented profits that are reinvested in more homes, creating a demand for more clients to fill beds that are supplied through the state court system and motivated by kickback incentives. A prominent California nursing home watchdog characterized this as organized crime at the state level. This is not just a North Carolina phenomenon, but a national one fueled by well-intended federal money and perverse incentives affecting

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[1] Three part series, *"Troubled Children, Trapped by Greed"*, (Part I) by Pam Kelley & Eric Frazier, *Charlotte Observer*, January 15, 2005; *"Millions wasted. The Cost? Kids' Lives"*, (Part II); by Pam Kelley & Eric Frazier, *Charlotte Observer*, January 16, 2005; *"Group Homes, the Gold Rush"*, by Pam Kelley & Eric Frazier, *Charlotte Observer*, January 16, 2005; *"Hundreds Sent Far Away from Relatives"*, by Pam Kelley & Eric Frazier, *Charlotte Observer*, January 16, 2005; *"Children Lost in Sea of Agencies"*, by Heather Vogel, *Charlotte Observer*, January 16, 2005; *"N.C. Halts Group Home Licensing"*, by Pam Kelley & Eric Frazier, *Charlotte Observer*, January 26, 2005.

a large segment of the local economy[2]. This problem parallels the foster care crisis that has developed reported by investigative reporters such as Troy Anderson in Los Angeles[3] and other reporters[4] exposing nationwide corruption

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[2] See also, *"Neglect for Sale"*, by Jennifer Washborne, *The American Prospect*, v. 11, Issue 12 (May 8, 2000).

[3] *"Study: Kids Rushed into Foster System"*, Troy Anderson, *L.A. Daily News*, September 29, 2003; *"Money Motive in Foster Care [Children: Half of county placements unnecessary, often driven by desire for funding]."* Troy Anderson, *Long Beach Press Telegram*, December 6, 2003; *"Foster Care Cash Cow ['Perverse incentive factor' rewards county for swelling system, critics say]"*, Troy Anderson, *L.A. Daily News*, December 6, 2003; *"Children endangered in wasteful, overburdened L.A. County system"*, Troy Anderson, *San Gabriel Valley Tribune*, December 6, 2003; *"Auditors target $9 million in expense abuses since '98"*, Troy Anderson, *San Gabriel Valley Tribune*, December 6, 2003; *"Private agencies diverting millions [Audits find parties, vacations, more]"*, Troy Anderson, L.A. Daily News, December 6, 2003; *"Foster care reform bring hope [New director, federal grant part of plans for $1.4B county system]"*, Troy Anderson, Long Beach Press Telegram, December 7, 2003; *"Critics say bonuses for adoptions warp intention, sell out children"*, Troy Anderson, San Gabriel Valley Tribune, December 7, 2003; *"Federal plan aims at keeping families together [Reform in child welfare viewed]"*, Troy Anderson, *San Gabriel Valley Tribune*, December 7, 2003; *"The foster care mess [Some children are put in harms way for a buck]" Long Beach Press Telegram* Opinion, December 10, 2003; "Failing the children [County foster care system corrupted by profits]", *L.A. Daily News*, December 10, 2003; *"Improve Foster Care"*, Pasadena Star-News, December 13, 2003; *"Report: L.A. foster care system one of most dangerous in nation"*, *Mercury News (Associated Press)*, December 28, 2003; *"Foster-kid cash lure may fade [Governor wants to alter system]"*, Troy Anderson, L.A. Daily News, February 16, 2004; *"Foster care shake-up weighed [Supervisors set to vote today on plan to keep families together]"*, Troy Anderson, *Long Beach Press-Telegram*, February 16, 2004; *"Study finds foster-care finance key in abuses"*, Troy Anderson, *L.A. Daily News*, May 17, 2004; *"Reuniting families turning into success story for county [Number of children living in foster homes drops nearly 10%]"*, Troy Anderson, *L.A. Daily News*, June 19, 2004;

[4] *"Children sacrificed for the case [Allegations set up a puzzle of doubtful ethics, dubious facts]"*, by Andrew Schneider and Mike Barber, *Seattle Post Intelligencer*, February 23, 1998; *"Ethical Misconduct at Florida Department of Children and Families Confirmed [Secretary under fire; two officials resign]"*, by Diane Hirth, *Tallahassee (Fla.) Democrat*, Jul. 16, 2004; "Forgotten Children [A Special Report on the Texas Foster Care System]", Carolyn Keeton Strayhorn, Texas Comp-

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and waste exploiting children unnecessarily removed from their families and placed in dangerous and abusive foster homes many times more dangerous than their own homes were alleged to be, for private profit.

In the present instance, it is well known and can be documented that the attorneys for the opposition San Andreas Regional Center (SARC), Berliner-Cohen of San Jose, CA, who spearheaded the case for the state for conserving Nancy, are actually representatives of the group home industry and they themselves either as a firm or as individuals heavily invest in group homes. The Chief Justice of the State Sixth District Court of Appeals, Hon. Conrad Rushing, has a fiduciary relationship with a managing partner of Berliner-Cohen, William Goines[5], and is a former founder of the firm, which was originally formed as Berliner, Cohen, Flaherty *and Rushing*. Rushing recently dismissed the parents state appeal just as they were starting to procure the trial transcripts, denying their appeal rights[6].

Based on testimony from a Regional Center official at trial, it may be estimated that statewide conservatorships gross the Regional Centers roughly ½ Billion dollar budget in MediCare and other federal programs. This explains in itself the apparently inexplicable determination of the Regional Centers and the State pouring what must be several millions of dollars into litigation against the Golins to prevent an adverse precedent. Recently, Golins have found that the limited partial trial proceedings that they have

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troller, April 2004."*Profiting from foster care*", by Patricia Callahan and Kirk Mitchell, *Denver Post,* May 22, 2000; "*Child Protection at the Crossroads; Child Abuse, Child Protection and Recommendations for Reform*", by Susan Orr, Reason Public Policy Institute, Policy Study No. 262, October 1999.

[5] Goines is Nancy J. Johnson's mentor and has shown a financial interest in the outcome of this case. Ms. Johnson is a full partner in Berliner-Cohen, and the lead attorney who represented San Andreas Regional Center spearheading the Conservatorship of Nancy Golin and numerous other similarly situated cases.

[6] See petition for *certiorari* from state court concurrently before this Court, No. 04-829.

finally managed to get despite the extreme hardship this matter has imposed on them are of little value, because the oral record of favorable opposing testimony has been altered and augmented in critical ways to protect state parties involved, as it was in at least five past hearings. A February 4, 2003 transcript was so tampered with that *even state officials* objected to Golins' motion for its admission into evidence at trial and it was thus stricken. State agency officials testified that they have formed an alliance with Child Protective and Adult Protective Services with their organized network of "sentinels" given incentives to bird-dog potential clients[7]. When the Golins in a May 23, 2004 settlement conference suggested merely removing Nancy as a start to another less adversarial Regional Center in Merced County where they live, where DDS still has control, SARC officials objected, "that is outside our *network*". This is part of an evil pattern and practice by state agencies involved with the care of the mentally disabled motivated by greed and indifference.

II. NANCY'S STATE ABUSE EXPLOITED BY STATE *OLMSTEAD* OPPONENTS AND PSYCH TECHS

Nancy's abuse in her group home is being exploited politically in recent news by state agency rear guardists opposed to deinstitutionalization pursuant to the *Olmstead* mandate. Their argument is that this shows putting institutionalized citizens like Nancy back in the community in group homes means that their care will suffer because of ineffective supervision and indifference by low-skilled below-minimum-wage undocumented Philippine care workers and therefore state hospitals for the mentally retarded such as Agnews Developmental Center situated nearby Nancy's group home, now set to close in 2007, should be kept open and integration into the community should be stopped. Missing in this argument are the voices of the families that would prefer to keep their miss-

[7] See also, *"Stolen Lives"*, by Barry Yeoman, *AARP Magazine*, (January-February, 2004)

ing handicapped relatives at home instead of *either* the impersonal state hospitals or group homes. This implies rather than sending Nancy back home to her highly skilled and loving family, she should be sent from her group home to a state hospital.

Just last month, a news article unexpectedly appeared concerning Nancy Golin in the San Jose Metro[8], focusing on an advocate working with the Regional Center supposedly advocating for Nancy Golin complaining about just a few of the less egregious abuses in the group home that Nancy formerly resided, revealing just how horrible these lesser abuses were. It says that Nancy was kept locked in her room most of the time, that in this one instance she had twelve uncontrolled seizures when she was confined to the point where she became cyanotic (turning blue from lack of oxygen) with her head banging on concrete and rupturing her esophagus and yet the tearful careworkers were still ordered by SARC not to take her to the hospital when this was occurring. The article states that seizures are generally underreported. SARC nearly killed her on this and other occasions. The state does not want it discovered contrary to their boast they cannot totally control Nancy's seizures either and in fact they are much worse in state care due to psychotropic drugging. Thus they avoid treating her, or they take her to different hospitals, as a conventional child abuser might do. The careworkers did not even have the skills to know that loss of bladder control was a result of seizures, and so she was left to urinate on the floor in the locked room until the carpet stank. This was suspected from the probate investigators' report but not proven.

This article suffers from many serious defects. Not mentioned is that this advocate, far from being a heroine, is the very same uninvited meddler and interloper that blocked removing Nancy from her group home to safety when she knew these abuses were taking place, she had

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[8] *"Forgotten Care"*, by Najeeb Hasan, *San Jose Metro*, January 12-18, 2005.

the power to do so, ridiculed the parents for "tattling" by reporting these same abuses to State Licensing two years earlier with the same ineffective result, concealed the witness that was responsible and withheld the evidence at trial, and constantly subverted the parents efforts to conserve their own daughter. When Mrs. Golin tried to question her as a witness for the whereabouts of this hidden careworker as she had refused to give up the information voluntarily, Judge Martin cut off the question saying this was improper – saying it supposedly should have been done as part of discovery (which also was blocked). Another witness that knew these facts, the home operator, Ms. Mantilla, was present in court when she was called as a witness by Mrs. Golin, but Judge Martin refused to let her to testify.

It does not mention that this advocate has a strong personal prejudice against the mentally retarded and believes they should not be seen in the community. She privately refers to retarded people as *"dweebs"*, and accused the Golins of "thoughtlessly *inflicting* Nancy on the public" by taking her out to a restaurant, despite that Nancy is very presentable in public. She testified she *"could not think of a fate worse than being owned by the State of California"*, but concealed evidence showing state abuse that should have saved her from this fate. The article calls Nancy her supposed "client" hinting that she was bought off as a hired advocate paid by the Regional Centers in exchange for her immunity to act as a toothless fox guarding their chicken coop, shifting blame from SARC to other parties including undocumented careworkers at the group home, whereas in fact the careworkers take orders including these particular orders directly from the hereunmentioned SARC.

Her unremarkable emotional instinct as a frustrated elderly unmarried childless former social worker seeking to attract attention to herself is known by the Golins to be greed and envy of other women that have children, husbands and friends. Claiming she has known Nancy for 13 years is misleading. For many years she had little or no

contact. In fact, she has no relationship to Nancy Golin, and never sees her due to inconvenience. In contrast, even SARC in a December 28, 2004 letter to the Golins admitted, *"Nancy appears to derive great joy from your visits"*.

It fails to mention that the group home operators, all of them that have kept Nancy at their residential care facilities, are also direct employees working as psychiatric technicians at the very same Agnews Developmental Center in San Jose, as state employees of DDS, which the Regional Centers oppose closing in 2007 according to court order, so it can hardly be said that care at the state hospital could be improved under their care at Agnews, nor that they could have maintained any independence from DDS orders. The one difference that motivates the state to oppose *Olmstead*[10] mandates in cases like Nancy's is that the state makes considerably more money on every inmate at the state hospital where inmates would receive minimal family oversight and where inmates can be more easily drugged senseless as the "standard of care" and abused without complaints than they may at group homes; in other words, maximizing state revenues and minimizing liabilities. As usual, it's all about the money

This is the very neglect and abuse that the parents alleged in trial to show that the state was a cruel and abusive conservator, but just a small part of it, yet far greater than anything the parents were ever falsely alleged to have done. The parents are never even mentioned in this article, nor did this reporter contact them for facts or inform them about the article, as if they were dead or had abandoned Nancy, despite his knowing how to reach them. The article reports officials complaining that they know the abuses are occurring but there supposedly is not any other place to put these people – ignoring the fact that there are willing families with their own homes where they would be safe but the state employees would make little or no money on them. Nor is it mentioned here the cited neglect and abuse in the group home took place under the supervision and at the express instructions of the

very same here-unnamed Regional Center officials whom the state court inexplicably saw fit to appoint as conservators in preference to her own caring parents. This is only a small portion of the same neglect and abuse under regional center custody that the state court turned a blind eye to when it made its conservatorship appointment. Neither is it mentioned that the same abuse that is spoken of here has continued in her new placement at Talla House where this advocate allegedly relocated her according to this article, because Talla House is still under the direct control of the same incompetent and corrupt state authorities and general practitioner Masada who prescribed illegal psychotropics that caused Nancy extensive permanent damage and nearly caused her death.

It should never be forgotten that the Nazi eugenics program in the late '30s began with a systematic roundup and top secret euthanasia of the mentally disabled as so-called "feeble-minded", "life unworthy of living" or "useless bread gobblers" by German psychiatrists beginning with the infamous Gnauer case, progressing to the T-4 killing centers, graduating to other "undesirables" forming the model for the holocaust[9], because there were financial incentives leading ordinary Germans to tolerate and ignore it, and the first step to extermination is ghettoization. This is public policy conceived by ADA and *Olmstead*[10] that can deter this outcome. There is absolutely no evidence based on history or human nature that this could never happen again here under certain circumstances if not guarded against, once indifference and insensitivity to the suffering and death of the mentally handicapped becomes publicly tolerated or financially rewarded. As of April 2002 there were found to be 221 unmarked graves

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[9] Robert J. Lifton, *The Nazi Doctors: Medical Killing and the Psychology of Genocide*, Papermac, London 1986 (Reprinted 1990) p. 142. Robert E. Conot, *Judgement At Nuremberg*, New York: Harper & Row, 1983, pp 211-212, Milton Meltzer, *Never to Forget*, Harper Collins, New York 1976, p131.

[10] *Olmstead v L.C. by Zimring*, 527 U.S. 581 (1999)

at Agnews and similarly at other state hospitals[11]. *Olmstead* must not be reversed.

Therefore, it can be found that in this case extraordinary circumstances exist due to local influence creating an absence of state corrective process to protect the rights of Nancy Golin, requiring federal habeas intervention. Thus even if this matter were remanded to state court, it is feared that due process would still be denied by other means and Nancy would continue to be drugged, neglected, tortured and abused through the strategy of bankrupting and persecuting the family as presumably unfit on overblown and frivolous grounds as a cover. In fact the state is irredeemably incompetent and corrupt due to local influence, pecuniary interest and private profiteering under the protection of the local state court system.

CONCLUSION

For the foregoing additional reasons this petition for *certiorari* should be granted, but if necessary *in the alternative to a grant of* Certiorari, it is suggested that a Motion for Remand may be granted the parents as next friends with a certificate of appealability or writ of habeas corpus to the court below in light of *Crawford*[12].

Respectfully submitted,

February 10, 2005

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[11] *"Legislature confronts issue of forgotten mental patients"*, by Jessica Brice, *Contra Costa Times*, May, 27, 2002

[12] *Crawford v. Washington, 541 U.S. 36* (2004)